UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON, SEATTLE

OMNI INNOVATIONS, LLC, a Washington Limited Liability company; JAMES S. GORDON, JR., a married individual; EMILY ABBEY an individual; and GRIFFIN ONLINE DOMAIN, LLC, a Washington Limited Liability company, **Plaintiffs,** v. **INVIVA, INC., a Kentucky and Delaware corporation, d/b/a American Life Direct, and American Life Insurance Co. of New York; and JOHN DOES, I-X,** **Defendants,**	**NO.** CV-06-1537-JCC **FIRST AMENDED COMPLAINT**

PARTIES, JURISDICTION, VENUE

1. Plaintiff OMNI INNOVATIONS, LLC, (hereinafter "OMNI") is a Washington limited liability company duly licensed and registered with the State of Washington, with its principal place of business in Franklin County, Washington.

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2. Plaintiff JAMES S. GORDON, JR., d/b/a GORDONWORKS.COM (hereinafter "GORDON") is a married individual residing in Franklin County, Washington.

3. Plaintiff EMILY ABBEY (hereinafter "ABBEY") is an individual residing in Seattle, Washington.

4. Plaintiff GRIFFIN ONLINE DOMAIN, LLC (hereinafter "GRIFFIN") is a Washington limited liability company duly licensed and registered with the State of Washington, with its principal place of business in Pasco, Washington.

5. On information and belief, plaintiffs allege that Defendant **INVIVA, INC., ("INVIVA") is a corporation registered in Kentucky and Delaware,** with its principal places of business in the states of Kentucky and New York, and does business under various names, including, but not limited to: American Life Direct and American Life Insurance Co. of New York.

6. Jurisdiction is proper pursuant to 28 U.S.C. §1331 (federal question) and 28 U.S.C. §1332 (diversity).

7. This Court has supplemental jurisdiction of state law claims pursuant to U.S.C. § 1367.

8. Venue is proper pursuant to 28 U.S.C. §1391.

9. From at least August 2003 through May 2005, Plaintiff GORDON doing business as GORDONWORKS.COM, provided and enabled computer access for multiple users to a computer server that provides access to the Internet.

10. From and after May 2005, Plaintiff OMNI provided and enabled computer access for multiple users to a computer server that provides access to the Internet.

11. From at least May, 2005 , Plaintiff Griffin provided and enabled computer access for multiple users to a domain that provided email accounts and access to the Internet.

12. The domain names served by Plaintiffs or one of Plaintiffs include: anthonycentral.com, chiefmusician.net, ehahome.com, itdidnotendright.com, jammtomm.com, jaycelia.com, celiajay.com, jaykaysplace.com, rcw19190020.com,

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and gordonworks.com (collectively the "Domains" and individually and generically a "Domain").

13. At all times material hereto, for the Domains and each of them, the information that all e-mail addresses at each Domain (the "Recipient Addresses") belong to Washington residents was and is available upon request from the registrant of each Domain, each registrant being a Washington resident and each Domain being registered with a Washington address.

14. During the time period of approximately August 2003 through May 2006, Plaintiffs received at the Domains electronic-mail messages (collectively the "E-mails" or individually and generically as an "Email").

15. The E-mails, and each of them, were received by Plaintiff Omni's servers serving the Domains, or at the Domains themselves, and/or on individual Plaintiffs' email accounts, and on their computers.

16. Each of the E-mails misrepresents or obscures information in identifying the point of origin or the transmission path thereof, and contains header information that is materially false or materially misleading. The misrepresentations include without limitation: IP address and host name information do not match, or are missing or false, in the "from" and "by" tokens in the Received header field; and dates and times of transmission are deleted or obscured.

17. On information and belief, Plaintiffs allege that some of the E-mails used the Internet domain name of a third party or third parties without permission of that third party or those third parties, and/or used false, or misleading information in registering the domains used to send the subject E-mails.

18. Defendant initiated the transmission of the E-mails, and each of them. In the alternative, Defendant conspired or otherwise acted in collusion with another or others or assisted another or others to transmit the E-mails, and each of them.

19. At all times material hereto, Defendants knew or had reason to know that the Recipient Addresses, and each of them, were and are held by a Washington resident.

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FIRST CAUSE OF ACTION – CAN-SPAM ACT

15 U.S.C. §7701 et seq.

20. On the basis of the facts set forth hereinabove, Defendants initiated the transmission of the E-mails, and each of them, to a protected computer in violation of 15 U.S.C. §7704(a), causing damage to Plaintiffs GORDON, OMNI, and GRIFFIN as the providers of the Internet access service receiving each such E-mail in the amount of $100 for each such E-mail, as provided in 15 U.S.C. §7706 (g) (3).

21. Defendants did willfully and knowingly so act in violation of the provisions of 15 U.S.C. §7701 et seq.

SECOND CAUSE OF ACTION – CEMA

RCW 19.190.010 - .070

22. On the basis of the facts set forth hereinabove, Defendants initiated, conspired with another to initiate, or assisted the transmission of the E-mails, and each of them, in violation of RCW 19.190.020, causing damage to Plaintiffs GORDON, OMNI, and GRIFFIN as the interactive computer service receiving each such E-mail in the amount of $1,000 for each such E-mail, as provided in RCW 19.190.040 (2), and to ABBEY'S individual computer in the amount of $500 for each such E-mail received at her E-mail address.

THIRD CAUSE OF ACTION – CONSUMER PROTECTION ACT

Ch. 19.86 RCW

23. On the basis of the facts set forth hereinabove, Defendants initiated the E-mails, and each of them, in violation of RCW 19.190.030 and Chapter 19.86 RCW, causing damage to Plaintiffs GORDON, OMNI, and GRIFFIN as the interactive computer service receiving each such E-mail in the amount of $1,000 for each such E-mail, as

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provided in RCW 19.190.040 (2), and to ABBEY in the amount of $500 for each email as an individual computer user.

REQUEST FOR RELIEF

Plaintiffs respectfully request the following relief:

1. Entry of a Judgment in favor of Plaintiffs Gordon, Omni, and Griffin against the Defendants in the amount of $1,100 per unlawful E-mail, plus such other and further damages as may be proved at trial, plus treble damages to the extent permitted by Chapter 19.86 RCW and to the extent permitted by 15 U.S.C. §7706 (g) (3) (C), plus prejudgment and post-judgment interest at the highest rate permitted by law, plus cost of suit and reasonable attorney fees pursuant to Chapter 19.86 RCW and 15 U.S.C. §7706 (g) (4);
2. Entry of a Judgment in favor of Plaintiff Abbey against the Defendants in the amount of $500 per unlawful E-mail, plus such other and further damages as may be proved at trial, plus treble damages to the extent permitted by Chapter 19.86 RCW, plus prejudgment and post-judgment interest at the highest rate permitted by law, plus cost of suit and reasonable attorney fees pursuant to Chapter 19.86 RCW;

3. Entry of a permanent injunction against the Defendants prohibiting the Defendants from sending or causing to be sent electronic mail messages of any kind or nature to e-mail addresses at the Domains, hereinabove.

4. Such other and further relief as the Court deems just and equitable in the premises.

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RESPECTFULLY SUBMITTED this 12th day of March, 2006.

i.JUSTICE LAW, P.C.

/S/ Robert J. Siegel
Robert J. Siegel, WSBA #17312
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/S/ Douglas E. McKinley, Jr.
Douglas E. McKinley, Jr., WSBA#20806
Attorney for Plaintiffs

Certificate of Service

I, hereby, certify that on March 15, 2007, I filed the attached pleading with this Court via approved electronic filing, and served the following:
Attorneys for Defendants: Derek Newman, Roger Townsend, Newman & Newman.

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/s/ Robert J. Siegel

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